UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

PSEG Power Connecticut, LLC Docket No. ER05-231-000

ORDER ACCEPTING RMR AGREEMENTS SUBJECT TO REFUND, ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES AND DIRECTING COMPLIANCE FILING

(Issued January 14, 2005)

1. On November 17, 2004, PSEG Power Connecticut, LLC (Power Connecticut) submitted for filing Reliability Must Run Agreements (RMR Agreements) between itself and ISO New England, Inc. (ISO-NE). The RMR Agreements provide cost-based rates for reliability services supplied by two Power Connecticut generating plants – the New Haven Harbor Generating Station (New Haven) and Unit 2 of the Bridgeport Harbor Generating Station (Bridgeport Harbor). Power Connecticut and ISO-NE negotiated the RMR Agreements pursuant to section 3.3 of Exhibit 2, Appendix A of New England Power Pool (NEPOOL) Market Rule 1, and Power Connecticut states that the RMR Agreements are necessary to ensure that the New Haven and Bridgeport Harbor facilities are appropriately compensated and remain available to ISO-NE to support system reliability. In this order, the Commission will accept the RMR Agreements for filing, subject to refund, suspend them for a nominal period, and set them for hearing and settlement judge procedures. Additionally, the Commission requires certain modifications to the RMR Agreements, and directs Power Connecticut to submit a compliance filing. This order benefits customers by further ensuring that generating units required for grid reliability will continue to safely operate in the interim period prior to the implementation of a locational installed capacity market.

I. Background

2. In several orders issued in 2003, the Commission began addressing issues surrounding the sufficiency of New England's capacity markets and the use of RMR agreements in constrained areas of the region, particularly Southwest Connecticut. The Commission rejected several RMR agreements in these orders, expressing concerns about

the effect such contracts have on the competitive market for capacity.[1] As an interim market-design adjustment to address certain flaws in the New England capacity market, the Commission directed ISO-NE to institute revised bidding rules (called Peaking Unit Safe Harbor, or PUSH bidding) to give low-capacity factor generating units operating in designated congestion areas the opportunity recover their costs through the market.[2] Additionally, the Commission directed ISO-NE to develop and file by March 1, 2004 a permanent mechanism to implement a location-based or deliverability requirement in the installed capacity (ICAP) or resource adequacy market, so that capacity located in designated congestion areas would be appropriately compensated for reliability.[3]

3. In response to the Commission's directive to develop a permanent location or deliverability requirement in the capacity markets, ISO-NE filed a proposed locational ICAP (LICAP) mechanism with an implementation date of June 1, 2004. As proposed, the LICAP mechanism would have added a locational element to the ICAP markets by establishing four regions with separate ICAP requirements and prices:[4] Maine, Connecticut, Northeast Massachusetts/Boston, and the remainder of New England. Under this proposal, capacity transfer limits would have been established to limit the amount of capacity that a load serving entity could procure from outside its region to meet its capacity obligation.

4. In early 2004, the Applicants in the *Devon Power* proceedings cited below returned to the Commission seeking approval of RMR agreements for certain generating facilities in Connecticut. In a March 22, 2004 Order, the Commission accepted the RMR agreements, set the costs included in the agreements for hearing and conditioned them to terminate on the day a LICAP mechanism or deliverability requirement is implemented

---

[1] *See, e.g.*, *Devon Power LLC*, 102 FERC ¶ 61,314 (2003); *Devon Power LLC*, 103 FERC ¶ 61,082 (2003); *PPL Wallingford Energy LLC*, 103 FERC ¶ 61,185 (2003); *Devon Power Company*, 104 FERC ¶ 61,123 (2003); *PPL Wallingford Energy LLC*, 105 FERC ¶ 61,324 (2003).

[2] *See Devon Power LLC*, 103 FERC ¶ 61,082 at P 33; *Devon Power Company*, 104 FERC ¶ 61,123 at P 25-31.

[3] *Devon Power LLC*, 103 FERC ¶ 61,082 at P 37.

[4] ICAP obligations are imposed on load serving entities, requiring them to procure a specified amount of ICAP each month to ensure that there is sufficient capacity to supply system peak load under various contingencies.

pursuant to the Commission's earlier directives.[5] The Commission reasoned that accepting the RMR agreements for a limited term was appropriate, given that the units covered by the contracts were aging, low capacity factor units that were performing poorly under the PUSH bidding rules.[6] The Commission expressed confidence, however, that once the permanent LICAP mechanism or deliverability requirement is established in New England, out-of-market arrangements like RMR agreements would no longer be necessary to maintain reliability.[7] Additionally, in orders issued on June 2 and November 8, 2004, the Commission addressed ISO-NE's LICAP proposal and delayed the implementation date until January 1, 2006.[8]

II. Power Connecticut's Filing

5. Power Connecticut states that the RMR Agreements submitted for filing in this proceeding cover charges for reliability services provided by Power Connecticut to ISO-NE from the New Haven and Bridgeport Harbor generating facilities. Power Connecticut and ISO-NE negotiated the RMR Agreements under section 3.3 of Exhibit 2, Appendix A of NEPOOL Market Rule 1. Power Connecticut argues that the RMR Agreements are necessary to ensure that the New Haven and Bridgeport Harbor facilities remain in operation to support reliability and are appropriately compensated for providing reliability services.

6. According to Power Connecticut, ISO-NE found in a 2003 reliability study that the New Haven and Bridgeport Harbor facilities are necessary for reliability purposes. Additionally, Power Connecticut notes that it advised ISO-NE that it was not recovering its costs in operating the New Haven and Bridgeport Harbor facilities and was considering its options with respect to the units. In response, Power Connecticut reports, ISO-NE again determined, in consultation with its Independent Market Advisor, that the facilities in question are needed for reliable system operation.

---

[5] *Devon Power LLC*, 106 FERC ¶ 61,264 (2004), *reh'g pending*.

[6] *Id.* at P 18.

[7] *Id.* at P 28.

[8] *Devon Power LLC*, 107 FERC ¶ 61,240 (2004), *order on reh'g*, 109 FERC ¶ 61,154 (2004), *reh'g pending*; *see also Devon Power LLC*, 109 FERC ¶ 61,156 (2004), *reh'g pending* (Order on Compliance Filing).

7. Power Connecticut also submits affidavits in support of its filing that purport to show that it has been unable to recover its cash outlays for operation and maintenance costs for the subject facilities under the current market rules. Power Connecticut contends that "[t]he appropriate economic response to the current market incentives" is to retire, deactivate or limit investment in the affected units, and argues that with the delay in the implementation of the LICAP mechanism, it has "no choice but to seek RMR Agreements with ISO-NE for units required to be available for reliability purposes yet unable to recover their cost of operation under the current market design."[9] Further, Power Connecticut asserts that the PUSH mechanism does not allow the New Haven and Bridgeport Harbor facilities to recover sufficient revenues. Power Connecticut states that New Haven, with a 2002 capacity factor of 16 percent, is not eligible for PUSH bidding. Further, Power Connecticut notes that because Bridgeport Harbor's capacity factor dropped significantly from 2002 levels and because its revenue requirement results in a PUSH bid adder of about $400/MWh, it would not frequently operate as an in-merit resource, making it unlikely that it will recover its costs.

8. The RMR Agreements filed by Power Connecticut are similar to the *pro forma* Cost of Service Agreement included in NEPOOL Market Rule 1. Under the RMR Agreements, Power Connecticut will be paid a fixed monthly charge for providing reliability services, determined according to the formulae in the contract and the Annual Fixed Revenue Requirement. The specific cost of service included in the RMR Agreements is discussed in greater detail below. Pursuant to the RMR Agreements, Power Connecticut must submit bids for energy and ancillary services generated by the facilities at the Stipulated Bid Costs of the Facilities[10], which are identified in schedule 3 of the RMR Agreements. Any infra-marginal revenues gained from such bidding are credited against the monthly charge provided for in the agreements. In the event of a forced outage, Power Connecticut must notify ISO-NE, and within 30 days of a Notice of Forced Outage, either party may notify the other party that the facility in question should be shut down.

---

[9] Transmittal letter of Power Connecticut at 7.

[10] Power Connecticut states that the Stipulated Bid Costs of the Facilities "are self-adjusting formulary rates that reflect agreed-upon formulae and marginal costs for fuel, variable [operations and maintenance] and environmental allowances, as defined in the RMR Agreements, and as reported to ISO-NE." Transmittal letter at 9.

9. As filed, the RMR Agreements will expire on the implementation date of a LICAP mechanism applicable to the covered unit. If ISO-NE determines that the New Haven or Bridgeport Harbor facilities are no longer necessary for reliability, the RMR Agreement may be terminated upon 120 days written notice. The instant RMR Agreements also include provisions differing from the *pro forma* Cost of Service Agreement that would allow Power Connecticut to submit a Notice of Intent to retire units covered by the agreements, and to thereafter commence negotiations with ISO-NE under section 18.5 of the Restated NEPOOL Agreement.[11]

10. Finally, Power Connecticut seeks waiver of the 60 day notice period required by section 205 of the FPA and section 35.3 of the Commission's regulations[12] to permit the RMR Agreements to become effective on November 18, 2004, subject to refund. Power Connecticut asserts that applying the five-month suspension period would cause it undue hardship, given that it is not currently recovering its expenditures and may not be able to sustain the current operations of the facilities without the RMR Agreements.

III. Notice of Filing, Interventions, Comments and Protests

11. Notice of Power Connecticut's filing was published in the *Federal Register*[13] with comments, protests and interventions due on or before December 8, 2004. Motions to intervene were filed by Bridgeport Energy LLC, Richard Blumenthal, Attorney General for the State of Connecticut (CTAG), Connecticut Light and Power Company, Connecticut Municipal Electric Energy Cooperative (CMEEC), Connecticut Office of Consumer Counsel (CT OCC), Dominion Energy Marketing, Inc., ISO-NE, Milford Power Company, LLC, National Grid USA, New England Power Pool Participants Committee (NEPOOL Participants Committee), NSTAR Electric and Gas Corporation, Select Energy, Inc., and The United Illuminating Company (UI). A notice of intervention was submitted by the Connecticut Department of Public Utility Control (CT DPUC). Motions to reject were filed by CTAG, CMEEC, and jointly by CT OCC and CT DPUC (collectively the Connecticut Parties). Protests were filed by CTAG, the Connecticut Parties, CMEEC, and the NEPOOL Participants Committee. Comments were filed by ISO-NE, the NEPOOL Participants Committee, and UI. Motions to consolidate were filed by CTAG and CT DPUC.

---

[11] *See*, the RMR Agreement at section 2.2.4.

[12] 18 C.F.R. § 35.3 (2004).

[13] 69 Fed. Reg. 71,029 (2004).

12. On December 7, 2004, Power Connecticut filed an answer to CT DPUC's motion to consolidate. On December 23, 2004, answers to the protests and comments were filed by Power Connecticut and ISO-NE. ISO-NE also answered the motions to consolidate. On December 29, 2004, the Connecticut Parties filed an amendment to their protest. Power Connecticut filed an answer to this amendment on January 7, 2004.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[14] the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[15] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Power Connecticut and ISO-NE because they have provided information that assisted us in our decision-making process. Additionally, we will accept the Connecticut Parties' filing of an amendment to its protest, and Power Connecticut's answer to that amendment, because these filings have assisted us in our decision-making process.

B. Issues Related to the RMR Agreements

1. Need for the RMR Agreements

14. CTAG, the Connecticut Parties and CMEEC all urge the Commission to reject the RMR Agreements. These intervenors contend that Commission acceptance of the RMR Agreements would violate Commission precedent holding that RMR agreements are to be invoked only as a remedy of last resort, and that Commission approval of RMR agreements in the instant docket would continue and hasten a "massive proliferation" of such contracts that may undercut the competitive wholesale market in New England. Additionally, some of these parties argue that Power Connecticut has not justified the use of RMR agreements, or offered sufficient evidence to show that the units covered by the agreements would be shut down without the use of out-of-market arrangements. Those urging rejection also assert that Power Connecticut's filing is incomplete because it does not contain complete cost and revenue information showing the revenues currently earned from the units in question.

---

[14] 18 C.F.R. § 385.214 (2004).

[15] 18 C.F.R. § 385.213(a)(2) (2004).

15. More specifically, CTAG and the Connecticut Parties assert that the RMR Agreements should be rejected because Power Connecticut has not made a showing that a "remedy of last resort" is required to keep the New Haven and Bridgeport Harbor facilities from shutting down. Further, the Connecticut Parties state that the correspondence between Power Connecticut and ISO-NE contained in the filing provides no evidence that ISO-NE has made an independent determination that the facilities will become unavailable without the RMR Agreements. Additionally, CTAG contends that generators should not be able to move between market operations and cost-of-service RMR treatment depending upon which situation offers greater compensation at a given time, and that if Power Connecticut qualifies for RMR treatment under these circumstances, virtually every other generator in Connecticut will also qualify. CTAG argues that Power Connecticut's application in the instant docket, the application filed by Milford Power in Docket No. ER05-163-000, and the likelihood that Bridgeport Energy LLC will seek an RMR agreement, represents a "massive proliferation" that will result in over 40 percent of installed capacity in Connecticut, and over 50 percent of capacity in Southwest Connecticut, operating under out-of-market financial arrangements, undercutting the competitive market.

16. CMEEC also contends that Power Connecticut misapprehends the purpose of the PUSH mechanism to allow some high cost but seldom run units to recover revenues through the market, and that Power Connecticut may have inappropriately bid the Bridgeport Harbor unit at the top of its PUSH bid levels, allowing it to recover even less revenues from the market. CMEEC also argues that the impending implementation of the LICAP mechanism does not justify the RMR Agreements filed in the instant docket, contrary to Power Connecticut's contentions.

17. Commission Determination. The Commission will accept the RMR Agreements for filing, subject to refund, reject certain proposed components of the cost of service, suspend them for a nominal period to be effective January 17, 2005, and set several matters related to the agreements for hearing and settlement judge procedures. Also, as discussed in more detail below, the Commission will require certain modifications to the RMR Agreements.

18. The intent of the PUSH mechanism was to allow peaking units within Designated Congestion Areas that seldom operate an opportunity to recover their costs through the market, instead of turning to out-of-market arrangements. The mechanism was an attempt to temporarily alleviate design flaws in the capacity market until a locational ICAP mechanism or deliverability was put in place. As the Commission has noted elsewhere, while the PUSH bidding rules have been effective for some generators, they

have not had the desired effect for others.[16] Particularly, older peaking units have fared poorly under the PUSH mechanism because they seldom run and are frequently subject to mitigation under the current market rules. These units have a substantial operating history, but due to the combination of their higher marginal costs, the fact that they seldom run, and the mitigation rules in place, they do not have an opportunity to recover an adequate amount of fixed costs through the energy, reserves or capacity markets. The Commission has allowed limited-term RMR agreements to keep such units in service, when ISO-NE has determined that they are needed for reliability. The New Haven and Bridgeport Harbor units are in similar circumstances. For the Bridgeport Harbor unit, an older unit with a low capacity factor that is needed for reliability, the existing market limitations prevent it from remaining economically viable. The New Haven facility, while not eligible for PUSH bidding, is also an older generating station that operates at a low capacity factor, and ISO-NE has determined that it is also needed for reliability.

19. Consistent with our prior orders in *Devon* and the subsequent New England RMRs, the Commission is hesitant to second-guess the reliability determination of ISO-NE, the independent grid operator responsible for ensuring reliability in the region. While Power Connecticut has not unequivocally stated that it will shut down the units without the RMR Agreements, the Commission has already found that under the current market rules, submitting a request to deactivate pursuant to section 18.4 of the Restated NEPOOL Agreement is not a prerequisite for receiving an RMR contract.[17] With the reliability of the electric system in Southwest Connecticut at stake, the Commission believes that accepting the RMR Agreements for a limited term to correct the compensation issues plaguing the affected units, while conditioning the appropriate costs that may be recovered under the contracts and establishing hearing procedures to further analyze certain aspects of the contracts, is the only prudent course of action.

20. Additionally, procedures are well underway at the Commission to address the long-term solution to the capacity situation in Connecticut and the New England region at large. Once the LICAP mechanism currently being addressed by the Commission is implemented, capacity in New England will be more appropriately valued based on its location. Those values will allow generators to receive more appropriate, market-driven prices than they receive under the current market rules, and out-of-market contracts will no longer be required. For this reason, the RMR Agreements the Commission is

---

[16] *Devon Power LLC,* 106 FERC ¶ 61,264 at P 18; *see also Review of PUSH Implementation and Results*, dated December 4, 2003 filed by ISO-NE in Docket No. ER03-563-025.

[17] *Devon Power LLC*, 109 FERC ¶ 61,154 at P 27.

addressing in this interim period expire when the LICAP market begins. Additionally, prices driven by location will encourage investment in infrastructure in areas where it is needed most, including the Southwest Connecticut area where the facilities in question are located. New infrastructure will allow lower cost and more efficient resources to compete with the older, inefficient units like those currently receiving RMR payments, resulting in savings for customers.

2. Cost of Service

21. Power Connecticut calculates the fixed costs included in its cost of service under the RMR Agreements using a traditional cost of service methodology, as applied to the specific RMR units at issue. Additionally, Power Connecticut outlines four maintenance projects needed for reliability to be completed on Bridgeport Harbor in the spring of 2005 at a combined total cost of $2,409,239 that are included in the cost-of-service rates.

a. Rate Methodology

22. Several parties protest the types and levels of costs included in Power Connecticut's proposed cost of service. CMEEC argues that the costs recovered in RMR agreements should be limited to "going forward" costs, or the actual and reasonable out-of-pocket costs incurred during the term of the agreement sufficient to maintain and operate the units and prevent shut down. CMEEC states that it would define "going forward costs" to include fixed operations and maintenance and property tax expenses, providing the minimum cost recovery necessary to keep the plant in service while providing strong incentive for Power Connecticut to pursue revenues though the market that can be applied against its other fixed costs. CMEEC asserts that any capital costs (such as return of or on investment) should be recovered as a share of its market-related revenues and be permitted to be retained by Power Connecticut.

23. Similarly, the Connecticut Parties argue that payments in the RMR Agreements should only be adequate to compensate the unit owner and keep the units operational, and should not grant Power Connecticut full recovery of all of its sunk costs. The Connecticut Parties argue that Power Connecticut has not provided, and its proposed RMR contract is not based on, the true variable or marginal operating and maintenance costs of New Haven and Bridgeport Harbor. If the Commission does not reject the contracts, the Connecticut Parties suggest that the Commission require a new filing based solely on the true variable or marginal operating and maintenance costs of the covered units, which are those costs that would be saved or avoided by shutting the units down. Further, they protest Power Connecticut's allocation of operation and maintenance and administrative and general costs, stating that such costs should be allocated based on

actual cost and usage, not on the units' designed kilowatt output. Parties also protest Power Connecticut's treatment of the regulatory costs associated with this proceeding, accumulated deferred income tax credits (ADIT), parent company overhead costs, and accelerated depreciation.

24. ISO-NE notes that in Docket No. ER05-163-000 (concerning RMR Agreements filed by Milford Power Company), it raised the policy issue of what level of sunk costs are appropriate to include in an RMR agreement. Further, ISO-NE states that in *Mirant,*[18] the Commission appeared to reject incremental RMR cost recovery as a general matter and established a policy of full cost-of-service recovery for RMR agreements.

25. CTAG, the Connecticut Parties, and CMEEC additionally make specific arguments regarding several items included in the cost of service. For example, CTAG, CMEEC, and the Connecticut Parties argue that the revenue analysis presented by Power Connecticut is incomplete because it presents the revenues of only the individual units seeking RMR treatment, and not the revenues of the generating stations as a whole. They argue that especially in the case of Bridgeport Harbor, where only Unit 2 is seeking an RMR contract, such "cherry-picking" of units is inconsistent with Commission precedent and traditional cost-of-service ratemaking. CTAG and the Connecticut Parties note that under traditional cost-of-service ratemaking, an appropriate revenue requirement was determined based on the aggregate costs and revenues of a utility, and that under such circumstances more profitable operations offset areas of under recovery. They assert that considering only less profitable operations overstates Power Connecticut's revenue requirement.

26. In a related argument, the Connecticut Parties and CMEEC note that Power Connecticut's affiliate, PSEG Energy Resources and Trade LLC (PSEG ER&T), has entered into a contract to supply UI with 100 percent of its Transitional Standard Offer requirement. The Connecticut Parties contend that because the New Haven and Bridgeport Harbor facilities are located inside UI's service area, Power Connecticut cannot deny that it has and will use such facilities to supply Transitional Standard Offer service, and that approving RMR agreements for the same units would essentially result in a rate increase under the contract, and would undercut the competitive wholesale bidding process. CMEEC asserts that there is no indication that the cost-of-service data submitted by Power Connecticut in support of the RMR Agreements includes revenues from the Transitional Standard Offer contract, and that the filing should thus be rejected as deficient.

---

[18] *Mirant Kendall, LLC and Mirant Americas Energy Marketing, L.P.*, 109 FERC ¶ 61,227 (2004) (*Mirant*), *reh'g pending*.

27. Various other aspects of Power Connecticut's cost of service are protested. Connecticut Parties protest the use of original cost of plant in service, arguing that Power Connecticut acquired the facilities at a substantial discount that is not included in the rate base. CMEEC contends that the inclusion in the cost of service of an "acquisition premium" should be disallowed under Commission precedent.[19] Additionally, Connecticut Parties and ISO-NE protest Power Connecticut's inclusion of negative salvage value in the rate base, asserting that such negative value should have already been included in the purchase price of the units, and that the negative values incorrectly assume that the sites do not have value as a site for new generation facilities once the current units are retired. Connecticut Parties also object to the amortization of the negative salvage values, stating that they should be amortized over the life of the unit, and not the short period of the RMR Agreements.

28. Further, on December 29, 2004, the Connecticut Parties filed an amendment to their protest, asserting that the Commission should deny Power Connecticut's request to recover certain federal and state income taxes included in its rate base in the RMR Agreements. The Connecticut Parties argue that under a recent federal court decision,[20] utilities that are "pass-through" entities for income tax purposes may not recover income taxes in their cost of service rates because they are not actually responsible for tax liability. They contend that to the extent Power Connecticut is such a pass-through entity, the tax recovery sought in the RMR Agreements is not warranted.

29. Power Connecticut argues in its answer that the Commission has previously permitted other units seeking RMR treatment to recover their full cost of service, citing *Mirant*, and states that to limit cost recovery to going forward costs could force generators to operate at confiscatory rates. Further, with regard to protestors claims regarding negative salvage values, Power Connecticut asserts that such claims are without merit, and that there has been no demonstration that Power Connecticut received benefits from a discounted purchase price. Also, Power Connecticut states in its answer that the rate base for the units was developed consistent with the Commission policy of using the lower of the book cost or the original rate base amount. Power Connecticut explains in its answer that under this policy, the original rate base amount, as depreciated, was lower than the assigned book value at the time of purchase, and accordingly no

---

[19] CMEEC cites *Duke Energy Moss Landing LLC*, 83 FERC ¶ 61,318 at 62,304-305 (1998), and argues that the Commission has previously found that acquisition premium recovery is not permitted where the purchaser of the plant will be able to sell power at market-based rates at least part of the time.

[20] *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263 (2004).

acquisition premium adjustment is warranted. Finally, in its January 7 answer, Power Connecticut asserts that the Connecticut Parties claims with regard to its ability to recover income taxes and the impact of the *BP West Coast* decision are misplaced, because Power Connecticut is not a "pass-through" entity, and the legal and factual circumstances in that case do not apply to the instant matter.

30. Commission Determination. We accept Power Connecticut's cost of service approach as consistent with recent RMR contracts. In prior RMR proceedings, the Commission has permitted recovery of fixed costs and variable costs under RMR contracts as essential costs for the services that the units continue to provide.[21] In *Mirant*, we rejected the exclusion of operations and maintenance, administrative and general, depreciation, and property tax expenses and further clarified that the Commission has permitted the recovery of these costs during the period the units operate under RMR agreements including taxes and a reasonable rate of return.[22]

31. While Power Connecticut's general approach is appropriate, we will set the cost of service itself for hearing and settlement judge procedures, as discussed below. Based on the record before the Commission, we are unable to determine whether the cost levels, amortization and depreciation amounts, inclusion of state and federal income taxes, and allocation of revenues in the cost of service are just and reasonable.

32. For example, the Commission is unable to determine if the original book value is less than Power Connecticut's purchase price. The Commission has historically disallowed acquisition adjustments (the premium paid above net book value) or discounts (actual price paid below net book value) in rates without a showing of ratepayer benefit,[23] and Power Connecticut does not disclose its purchase price nor does it deny that the purchase price was discounted. The record does not reveal the necessary ratepayer benefit, and thus we will set these matters for hearing and settlement judge procedures.

---

[21] *See ISO New England, Inc*. 105 FERC ¶ 61,263 (2004), *on reh'g*, 107 FERC ¶ 61,234; *see also Devon Power LLC*, 106 FERC ¶ 61,264.

[22] *Mirant* at P 36.

[23] *See, e.g., Utilicorp United Inc.*, and *Centel Corporation*, 56 FERC ¶ 61,031, at 61,120 and nn. 26-28, *reh'g denied*, 56 FERC ¶ 61,427 at 62,528-29 (1991); *Minnesota Power & Light Company*, 43 FERC ¶ 61,104 at 61,341-42, *reh'g denied*, 43 FERC ¶ 61,502 (1989), *appeal dismissed*, No. 88-2234 (8th Cir. Sept. 14, 1989).

33. Additionally, while the Commission agrees with the parties in this proceeding that Power Connecticut's claimed costs and revenues must be allocated correctly, we do not agree with the "cherry picking" arguments they raise. Generating stations may contain units of varying ages and technologies, each of which may have different operating characteristics and costs. Decisions are often made by owners on a unit-specific basis, such as whether to retire or curtail operations. This is a situation common to other owners of RMR units in New England. As such, the Bridgeport Harbor station contains peaking units as well as baseload units. The peaking units fall into the category of the peaking generators described above that are having difficulty receiving adequate compensation due to market rule constraints, and therefore could be subject to short-term, cost-based contracts. Moreover, wholesale sales tied to the costs and availability of specific units, as here, were common in the cost-of-service regulatory era.

34. The Commission does, however, share concerns that costs and revenues within the generating stations and within the Power Connecticut fleet be allocated correctly. This is of particular concern regarding the Transitional Standard Offer service contract that PSEG ER&T holds with UI. We agree with the Connecticut Parties and CMEEC that the cost of service data submitted by Power Connecticut is unclear as to whether it includes revenue received by the units for service they provide under the Transitional Standard Offer contract. Power Connecticut should not receive additional revenues for the Standard Offer service through the RMR Agreements, above and beyond the bargain reached between PSEG ER&T and UI in the contract. Accordingly, the Commission will set for hearing and settlement judge procedures (established below) the general issue of the treatment of the Transitional Standard Offer service contract with UI, and the revenues received under that contract by Power Connecticut.

35. The Commission's preliminary analysis indicates that the proposed rates in the RMR Agreements have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, as noted elsewhere in this order, the Commission will accept the RMR Agreements, suspend them for a nominal period to be effective November 18, 2004, subject to refund and set them for hearing.

36. To provide the parties an opportunity to resolve these matters among themselves, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[24] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this

[24] 18 C.F.R. § 385.603 (2004).

proceeding; otherwise, the Chief Judge will select a judge for this purpose.[25] The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

37. While the hearing and settlement judge procedures established in this order should consider the entire cost of service, the Commission does rule on certain other aspects of the RMR Agreements, as discussed below.

b. Remediation Costs

38. Connecticut Parties and ISO-NE object to Power Connecticut's inclusion of $1,983,271 in certain environmental clean up costs at the generation site. They assert that these environmental problems were present before Power Connecticut purchased the site, and thus, these site remediation costs should have been factored into Power Connecticut's purchase price of the generation units, and should not be included in rate base as proposed in the instant RMR Agreements.

39. Power Connecticut states that protestors' claims that environmental remediation costs should not be included are unfounded. Power Connecticut argues that it is well established that environmental remediation costs are part of a company's cost of service.[26] Power Connecticut asserts that it has complied with the Commission's policy on determining rate base, and the existence of a particular obligation at the time of purchase does not override the Commission's policy.

40. Commission Determination. It is not clear from Power Connecticut's filing whether the purchase price of the facilities was already discounted for the site remediation costs. Assuming *arguendo* that the purchase price of the facilities was not discounted for the site remediation costs, these costs would be reviewed to determine

---

[25] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone a (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their backgrounds and experience. (www.ferc.gov –click on Office of Administrative Law Judges).

[26] *See* Answer of Power Connecticut at 15, *citing Williston Basin Interstate Pipeline Co.*, 84 FERC ¶ 61,081 at 61,366 (1998).

whether it is just and reasonable to include them under an RMR agreement, as discussed above. Power Connecticut has not, however, demonstrated why these site remediation costs must be recovered during this interim period, nor has Power Connecticut explained why these remediation costs should not have been recovered before or after the term of the RMR Agreements. Furthermore, the fact that other units exist in the same stations and apparently operate profitably is strong indication that the site will continue to host generation facilities in the future and remediation costs may never be incurred. Therefore, we will include Power Connecticut's request to recover the site remediation costs in the hearing and settlement judge procedures discussed above.

c. Spring 2005 Maintenance Costs

41. As noted above, Power Connecticut includes in its cost of service four maintenance projects for Bridgeport Harbor, to be completed in Spring 2005 at a cost of $2,409,239. ISO-NE protests the inclusion of such one-time projects, arguing that they are inappropriately included in the annual fixed revenue requirement, which may be in effect for more than twelve months. ISO-NE requests that the Commission consider allowing Power Connecticut to recover these one-time expenses through a separate mechanism. CMEEC states that these are capital expenditures that should be afforded capital treatment and be recovered over multiple years, rather than as expenses to be recovered fully within the term of the RMR Agreements.

42. Commission Determination. The Commission agrees with ISO-NE that the Spring 2005 operations and maintenance costs should be recovered in a separate mechanism to accurately track when the one-time expenditures are fully recovered. Accordingly, Power Connecticut is directed to submit a compliance filing, within 30 days of the date of this order, separating out such expenditures into a separate mechanism.

43. The Commission is also concerned with other aspects of these expenditures, including their potential cost and timing. It is not clear whether the Spring 2005 maintenance projects are of a capital investment nature, as CMEEC asserts, and thus properly amortized over the life of the Bridgeport Harbor unit. The Commission is also concerned that Power Connecticut has postponed these projects, which they deem necessary for the reliable operation of the unit. Power Connecticut is now asking that these projects be fully recovered under the term of this Agreement. However, this RMR Agreement is a short-term transitional arrangement and these projects appear to be periodic in nature as compared to ongoing maintenance expenses. As such, it may not be appropriate for Power Connecticut to fully recover these expenditures under the term of the Agreement to the extent that the expected life of a particular maintenance project is greater than the term of the Agreement. Therefore, the hearing process established by this order should determine whether the individual Spring 2005 maintenance project costs are operation and maintenance costs that should be recovered during 2005, or whether

they are capital investments recoverable and thus amortized over the remaining life of the unit. We also set for hearing the appropriate mechanism to recover any resulting going forward maintenance costs, and whether those costs classified as operation and maintenance expenses should be amortized and recovered over a period that extends beyond 2005.

d. Return on Equity

44. The Connecticut Parties state that the proposed return on equity (ROE) of 10.88 percent for these units lacks justification. To support this claim, the Connecticut Parties and CMEEC both note that the Commission-approved 10.88 percent ROE actually originates from the PUSH bidding mechanism, a more risky mechanism than the proposed cost-of-service RMR agreement. Further, the Connecticut Parties state that the risk faced by a generator under an RMR contract is very low, and similar to the risk faced by a distribution company (which typically receives lower relative ROEs). Finally, the Connecticut Parties state that Power Connecticut, which carries high debt levels, should have a considerably lower ROE than even a distribution company. Both the Connecticut Parties and CMEEC state that if this RMR filing is accepted, then the ROE should be set for hearing.

45. Commission Determination. We reject the request of both the Connecticut Parties and CMEEC to set the ROE of 10.88 percent for hearing. As noted by both parties and by Power Connecticut, the 10.88 percent ROE value originates from the July 24, 2003 *Devon* Order[27] and has been accepted by the Commission in other RMR cost-of-service orders, including most recently in *Mirant*. The proposed ROE represents the midpoint of the zone of reasonableness that reflects the risk of peaking units in New England that are needed during the interim period prior to LICAP. Therefore, in light of the Commission's precedent to accept this value, and the temporary nature of this agreement, the Commission will accept the proposed ROE of 10.88 percent.

3. Proposed Deviations from the *Pro Forma* Cost of Service Agreement

46. As noted above, the RMR Agreements contain certain provision which differ from the *pro forma* agreement included in NEPOOL Market Rule 1. The RMR Agreements include modifications to the termination provisions contained in articles 2.1, 2.2.3, and 2.2.4, the offsetting of revenue provisions in article 3.1.2, and also change language from 'good utility practice' to 'Accepted Electric Industry Practice' in article 5.1. Further,

[27] *Devon Power Company*, 104 FERC ¶ 61,123 at P 49.

modifications are made to the provisions regarding forced outage repair costs in article 5.2.2(e) and the force majeure provisions in article 6.2. Finally, Power Connecticut added a new article 9.12 regarding dispute resolution.

47. The Connecticut Parties note that article 2.1 was changed to have the Agreements terminate "on the day before a LICAP mechanism becomes effective." They request that the Agreements end on a date certain because they are concerned that LICAP implementation will be delayed beyond January 1, 2006.

48. The NEPOOL Participants Committee argues that the Commission should not accept the proposed changes in articles 2.2.3 and 2.2.4 of the RMR Agreements. The NEPOOL Participants Committee contends that the changes proposed in these sections would modify the NEPOOL filed rate and circumvent the NEPOOL review process for new or materially changed plans for retirement of Participant-controlled resources. Connecticut Parties argue that the revisions to section 2.2.4 would unjustifiably give Power Connecticut the right to give notice of its intent to retire at any time and commence negotiations (presumably to renegotiate the terms of the RMR Agreement) under Section 18.5 of the Restated NEPOOL Agreement.

49. The Connecticut Parties state that article 3.1.2 was changed to reduce the amount of revenues from the RMR units that will offset reliability payments under the RMR Agreements. The Connecticut Parties argue that under the *pro forma* contract, all revenues above the stipulated bid cost should be counted as an offset against the reliability payments, and that this "open-ended provision" is unreasonable.

50. The Connecticut Parties note that in article 5.1, and globally throughout the contract, "Accepted Electric Industry Practice" was substituted for "Good Utility Practice." The Connecticut Parties request that the definition of "Accepted Electric Industry Practice" be amended to include within its meaning adherence to the long-established standard of "Good Utility Practice."

51. The Connecticut Parties note that provisions regarding forced outages in article 5.2.2(e) were changed from the *pro forma* to require: (1) ISO-NE to pay Power Connecticut disputed amounts for repair costs to the RMR units subject to refund; (2) that ISO-NE and Power Connecticut use alternative dispute resolution before going to the Commission or court to resolve disputes over the repair costs; and (3) that expenditures be offset by insurance proceeds received by Power Connecticut. The Connecticut Parties argue that ISO-NE should not pay Power Connecticut disputed repair cost amounts because this would limit ISO-NE's discretion to determine what repair costs are reasonable. Further, the Connecticut Parties assert that the alternative dispute resolution provisions should be rejected because they limit state utility regulators and consumer advocates from participating as they would in a court or Commission proceeding.

Finally, the Connecticut Parties state that any offset to repair costs associated with outages should not be limited to insurance proceeds recovered by Power Connecticut, but should include any and all third-party sources.

54. The Connecticut Parties also state that in article 6.2 of the agreement, Power Connecticut struck language from the *pro forma* agreement that would allow ISO-NE to terminate the contract when Power Connecticut has failed to operate the Resource for thirty consecutive days due to a force majeure event. The Connecticut Parties argue that this language should be retained, because customers should not be required to pay for a unit that has ceased to operate for a significant amount of time and no longer provides reliability benefits.

55. The NEPOOL Participants Committee notes that Power Connecticut proposes a new article 9.12, requiring the use of alternative dispute resolution, that is not contained in the *pro forma* agreement. NEPOOL states that this provision should be clarified before execution of the final RMR Agreements.

56. Commission Determination. We reject the Connecticut Parties' request to alter article 2.1 of the RMR Agreements to terminate them on a specific date, rather than the proposed day before a LICAP mechanism becomes effective. In the LICAP proceeding the Commission stated that it will consider RMR agreements that are limited to a single term, expiring when the LICAP mechanism is implemented. Termination of this agreement "upon the implementation of LICAP" is also consistent with prior Commission orders, including the recently approved RMR agreement in *Mirant*.[28]

57. As proposed, article 2.2.4 of the RMR Agreements would permit Power Connecticut to provide ISO-NE written notice of its intent to retire at any time, and commence negotiations under section 18.5 of the RNA. We agree with the NEPOOL Participants Committee that by sending ISO-NE written notice of its intent to retire, Power Connecticut would circumvent the NEPOOL process under section 18.4 of the Restated NEPOOL Agreement for review of either unit retirement or other actions that might affect the stability, reliability, or operating characteristics of the system. Power Connecticut provides no arguments that justify why these deviations from the *pro forma* contract are necessary. Accordingly, we reject these proposed revisions to the *pro forma* Cost of Service Agreement, and direct Power Connecticut to submit a compliance filing within 30 days of the date of this order with such revisions removed.

[28] *See Mirant*; *see also Devon Power LLC*, 106 FERC ¶ 61,264.

58. ISO-NE states in its answer that the intent of the revised article 3.1.2 is to prevent double recovery of costs while providing Power Connecticut with the incentive to pursue additional revenues that would lower overall costs under the Agreements. ISO-NE, in its answer, proposed clarifying language to section 3.1.2 that it says would address the concerns of the Connecticut Parties. The proposed language reads:

> Any revenues related to the resource (including from bilateral agreements, emissions credits, release of firm transportation arrangements, etc.) less any incremental costs ~~associated with those revenues~~ directly related to securing additional revenue (*i.e.*, beyond revenues earned in the NEPOOL markets) that are not already accounted for ~~herein~~ in the Monthly Fixed Cost Charge or Stipulated Bids. In no event may these incremental costs be greater than the incremental revenues on a case by case basis.

We find ISO-NE's clarifying language appropriate, and therefore accept such revised language. Power Connecticut is directed to modify article 3.1.2 of the agreement as shown above and submit the revisions in its compliance filing, due within thirty days from the date of this order.

59. Power Connecticut substitutes "Accepted Electric Industry Practice" for "Good Utility Practice" throughout the Agreement, without providing justification for this change from the *pro forma* agreement. An examination of Market Rule 1, however, reveals that the definitions of Accepted Electric Industry Practice and Good Utility Practice appear to be synonymous.[29] We will accept this change as consistent with the *pro forma* agreement in Market Rule 1.

60. The Connecticut Parties object to the proposed revisions made to article 5.2.2(e) that relate to expenditures required to return a unit to service following a forced outage. In its Motion for Leave to Answer, ISO-NE states that this section was updated to be consistent with the September 21, 2004 *Order on Rehearing* in the Devon RMR proceedings.[30] To clarify, the Devon *Order on Rehearing* outlines that any change in the monthly reliability payment requires the Commission's prior determination, under section 205 of the FPA, that the new amount is just and reasonable. Thus, any additional expenditures as provided for under section 5.2.2(e) not already on file with the Commission would constitute a change in the filed rate and would require Power

[29] New England Power Pool FERC Electric Rate Schedule No. 7, Original Sheet No. 3, section 1.3.2.

[30] *See ISO New England, Inc.*, 108 FERC ¶ 61,272 at P 21, 29 (2004).

Connecticut to file them under 18 C.F.R. §35.13 prior to any proposed recovery. Second, based upon the requirements of the Devon *Order on Rehearing*, we deny the Connecticut Parties' motion to reject alternative dispute resolution. Finally, we agree with the Connecticut Parties that any offset recoveries to repair costs associated with outages should include any and all third-party sources, not just insurance proceeds. The Commission directs Power Connecticut to submit a compliance filing within 30 days of the date of this order to reflect the above revision to section 5.2.2(e).

61. The Connecticut Parties are concerned that language was struck from article 6.2 of the Agreements that would allow the ISO-NE to terminate the contract when Power Connecticut has failed to operate the Resource for thirty consecutive days after a force majeure event, thereby allowing Power Connecticut to continue to receive fixed cost payments pursuant to the Agreements for extended periods while the unit does not operate. ISO-NE notes in its answer that under article 5.2.2(c), it still retains the ability to terminate the agreement after a force majeure event. Further, in the proposed agreement, a sentence was added to article 6.2 that identifies a force majeure event as a Forced Outage. We agree that under article 5.2.2(c) of the proposed agreement, ISO-NE retains the ability to terminate the agreement within 30 days of a Notice of Forced Outage. Therefore, we reject the argument of the Connecticut Parties and find that article 6.2 of the proposed agreement is acceptable in its present form.

62. We agree with the NEPOOL Participants Committee that new article 9.12 in the RMR Agreements, which provides that disputes between the parties "may be referred for resolution utilizing a procedure equivalent to the Alternative Dispute Resolution provisions in Appendix D of Market Rule 1 or . . . the NEPOOL Billing Policy," is unclear. The new article does not provide enough specificity regarding the particular dispute resolution provisions that will be utilized in the event of a dispute, and what remedies will remain to the parties should such alternative dispute resolution fail. The Commission will reject this article, and directs that in its compliance filing Power Connecticut remove the article from the RMR Agreements.

C. Request for Waiver of 60 Day Notice Period and Suspension

63. As noted above, Power Connecticut seeks waiver of the 60 day notice period required by section 205 of the FPA and section 35.3 of the Commission's regulations, arguing that it would be subjected to undue hardship to have the RMR Agreements suspended for five months, given that it is already failing to recover out-of-pocket costs related to operation of the New Haven and Bridgeport Harbor facilities.

64. CMEEC requests that the Commission deny waiver of the 60-day notice requirement and suspend the rates under the RMR Agreements for the full statutory period of five months. In support of these requests, CMEEC states that Power Connecticut made no section 18.4 application to retire, and waited until mid-November to makes it filing despite having ample time. Furthermore, CMEEC states that while it was evident in *Mirant* that immediate relief was necessary to ensure continued operation, Power Connecticut has made no showing that it will have to deactivate the units if it is not granted waiver of the 60-day notice requirement. If the Commission denies CMEEC's request for a five-month suspension, CMEEC requests suspension of the RMR Agreements for a nominal period, with the rates subject to refund. CMEEC states that the Commission's finding in *Mirant* (that *West Texas Utilities Company*[31] may not be applicable where an entity moves from a market-based arrangement to a cost-based arrangement) should not be applied here because Power Connecticut seeks to recover substantially more than it would have recovered under its market-based tariff.

65. The Connecticut Parties state that Power Connecticut's proposed RMR rates are unjust and unreasonable, and because they would impose on ratepayers excessive costs that are more than 10 percent above just and reasonable rates, they should be suspended for the full five-month statutory period. In support of this request, Connecticut Parties state that Power Connecticut's proposed cost recovery of $19 million for Bridgeport Harbor, a unit with a 3.26% capacity factor, is *per se* excessive, unjust, and unreasonable by any standards and should not go into effect as of November 18, 2004. Further, the Connecticut Parties state that the kW rate that results from Power Connecticut's proposal is at least 10 percent in excess of what is just and reasonable when compared to the RMR agreements approved by the Commission between ISO-NE and NRG's Devon Units 7 and 8.

66. In its answer to the motions of the intervenors to suspend the Agreement, Power Connecticut states that it would be unfair to impose the full five-month statutory suspension period upon the proposed rates, since the rates are only proposed to be in effect for approximately one year. In support of this argument, Power Connecticut compares its filing with other RMR applications for which the Commission previously granted a one-day suspension period, including *Devon*.

67. Commission Determination. The Commission has granted waiver for good cause where: (1) agreements are intended to permit a generator needed to assure system reliability to operate; (2) the applicant may only learn upon very short notice which units will be RMR units; and (3) the applicant may not be able to file 60 days prior to the

[31] 18 FERC ¶ 61,189 (1982) (*West Texas*).

commencement of service due to short notice.[32] While this agreement is the outcome of a negotiated unexecuted agreement for reliability services between Power Connecticut and ISO-NE, we find no cause for granting waiver. Power Connecticut presents no justification for granting waiver other than the lack of adequate cost recovery for the New Haven and Bridgeport Harbor units. Furthermore, we note that Power Connecticut received notification from ISO-NE of the necessity of these units for reliability in August 2004, but did not file the instant RMR Agreements until November. Thus, we find that no extraordinary circumstances exist such that Power Connecticut should be granted waiver, and will deny waiver accordingly.

68. In *West Texas*, we explained our standard for determining whether a rate increase is excessive as compared to the rate on file and thus may require maximum suspension. However, in *Mirant*, we stated that *West Texas* was not applicable where the current rate on file for the RMR units was not a cost of service rate.[33] Consistent with *Mirant*, since Power Connecticut's current rate on file for these units is not a cost of service rate, we find that the test in *West Texas* is not applicable. CMEEC's argument concerning deactivation is misplaced, because as the Commission noted in its November 8, 2004 Order in the LICAP proceeding,[34] the current market rules do not require an application for deactivation as a prerequisite for negotiating an RMR agreement with ISO-NE. In response to CMEEC's contention that the *West Texas* test should be applicable here since Power Connecticut stands to recover "substantially" more revenue under the RMR Agreements than under its market-based tariff, we note that additional revenue recovery is precisely the point of these agreements, and by itself does not present a valid argument for why they should be suspended for the maximum period. We reiterate that this is a short-term agreement, necessary to remedy a reliability concern.

69. The argument for a full five-month suspension period by the Connecticut Parties provides little basis for imposing a suspension, other than to compare the proposed RMR cost of service for these units with the RMR cost of service rates for Devon Units 7 and 8. The Connecticut Parties also speculate as to whether reactivation of the Devon units is a "reasonable alternative" to the proposed agreement. However, the determination of which units are needed for reliability is the responsibility of ISO-NE.

---

[32] *See Mirant Americas Energy Marketing, L.P.*, 105 FERC ¶ 61,359 (2003).

[33] *Mirant* at P 16.

[34] *Devon Power LLC*, 109 FERC ¶ 61,154 at P 27.

Furthermore, as documented in Milford Power Company's recent application for an RMR agreement,[35] the Devon units were deactivated based on the activation of the Milford facility. Due to transmission constraints in Southwest Connecticut, it is not clear that the Devon units could even be brought online to provide the reliability services currently being provided by the New Haven and Bridgeport units. Accordingly, we will accept the proposed RMR Agreements for filing, suspend them for a nominal period, subject to refund, and set them for hearing and settlement judge procedures.

D. Other Issues

70. The NEPOOL Participants Committee states that before the RMR agreements were filed, there was no direct consultation through NEPOOL with stakeholders that will be affected by these agreements. The NEPOOL Participants Committee note that these agreements were not preceded by a Section 18.4 application to shut down or retire the units, and were not reviewed by any of the NEPOOL Technical or Reliability Committees. The NEPOOL Participants Committee explains that contrary to RMR agreements that are accompanied by a section 18.4 application, the instant RMR Agreements (and Milford Power Company's RMR filing), because they do not apply to retire or shut down, do not consult with the NEPOOL Reliability Committee or other committees, such as the Markets Committee, or Technical Committee.

71. CMEEC argues that if the Commission approves the RMR Agreements, it should suspend Power Connecticut's market-based rate authority for the New Haven and Bridgeport Harbor units covered by the contracts. CMEEC contends that the RMR Agreements would provide Power Connecticut with revenues outside of its representation to the Commission in securing market-based that it would sell at market-based rates into markets administered by ISO-NE. Further, CMEEC argues that the RMR Agreements themselves represent an exercise of market power by Power Connecticut, requiring the suspension of market-based rate authority.

72. Commission Determination. As stated elsewhere in this order, the Commission has determined that under the current market rules in New England, units seeking an RMR contract with ISO-NE are not required to first apply to shut down or retire the units under section 18.4 of the Restated NEPOOL Agreement. The Commission views this issue as one of internal NEPOOL and ISO-NE processes, and will not address it here. We also note that this issue is currently on rehearing in the LICAP proceeding, and is more appropriately addressed in that docket.

---

[35] Docket No. ER05-163-000, Attachment F.

73. With regard to the request that we suspend Power Connecticut's market-based rate authority, the Commission notes that article 3.1.2 of the RMR Agreements provides that any revenues related to the RMR units will be offset against the reliability payments made to Power Connecticut under the contracts. As a result, Power Connecticut may utilize its market-based rate authority to obtain revenues in the markets (outside of simply bidding at the required stipulated bid), which would then be credited against the monthly reliability payments, benefiting customers. The Commission does not believe it is necessary or prudent to take away this option from Power Connecticut.

E. Motions to Consolidate

74. CTAG and CT DPUC each filed motions to consolidate. They argue that Power Connecticut's filing is only one of the first of many RMR agreements that they expect generators in Connecticut to file. As a result, and given the Commission's stated commitment to limit RMR agreements, CTAG and CT DPUC contend that the Commission should consolidate the instant filing with all other pending and prospective RMR agreement filings to allow for the consideration of the cumulative impact of such out-of-market contracts on ratepayers and the wholesale electricity market.

75. In their answers, Power Connecticut and ISO-NE each oppose consolidating the instant matter with other pending and prospective RMR dockets. They contend that the Commission's standards for consolidation are not met in the instant matter. Specifically, they argue that the issues presented by each RMR agreement are fact specific, and consolidating the filings into a larger proceeding will lead to delay for at least some of the dockets, and not serve the Commission's goal of efficiency when consolidating proceedings. ISO-NE also asserts that the only common issues presented by the RMR filings are high-level policy issues, for which consolidation is not necessary, because the precedent from one Commission order may be applied prospectively to future RMR cases.

76. Commission Determination. The Commission agrees with Power Connecticut and ISO-NE that the Commission's standards for consolidation are not met here, and will not grant the motions for consolidation of CTAG and CT DPUC. Generally, the Commission consolidates cases where there are common issues of law and fact,[36] where some efficiency might be gained through consolidation,[37] and for purposes of hearing and

[36] *See Southwestern Public Service Co.*, 109 FERC ¶ 61, 373 at P 14 (2004).

[37] *See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 103 FERC ¶ 61,359 at P 11 (2003).

decision.[38] Here there are few common issues of law and fact, because each RMR agreement presented to the Commission will be filed under unique circumstances, and each proposed RMR unit will present different costs of service. Additionally, consolidating the instant docket with currently pending and future RMR cases would not serve the goal of efficiency because the currently-pending RMR cases are on different time schedules, and it is unclear if or when additional RMR contracts will be filed with the Commission.

The Commission orders:

(A) The RMR Agreements filed by Power Connecticut are hereby accepted for filing, as modified, and suspended for a nominal period, to be effective January 17, 2005, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates contained in the RMR Agreements. As discussed in the body of this order, the hearing will be held in abeyance to give the parties time to conduct settlement judge negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within fifteen (15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement

[38] *See California Independent System Operator Corp.*, 109 FERC ¶ 61,391 at P 45 (2004)

discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(F) Power Connecticut is directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.